IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16008 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KARSANBHAI JESHANGBHAI DESAI - Petitioner(s)

Versus

DEPUTY COLECTTOR & 1 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner No(s).: 1.

GMR PR ABICHANDANI AGP for Respondent No(s).: 1, 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/08/2005

ORAL JUDGMENT

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1. Rule. Learned AGP Mr.P.R.Abichandani wavies service of rule on behalf of the respondents.

2. In the present petition, the petitioner has challenged an order dated 1/7/2005 passed by the City Survey Superintendent by which the petitioner was estopped from carrying further construction on the land bearing City Survey No.905 and Panchayat Assessment No.797 being Block No.32/148. The petitioner appealed against the said order before the Dy. Collector. The Dy. Collector by his order dated 29/7/2005 refused to vacate the interim order passed by the City Survey Superintendent.

3. It is the case of the petitioner that the petitioner had purchased the land in question validly. It appears that the stand of the respondents is that the land was granted for charitable purpose and the same could not have been sold by the wife of deceased Yoganand Guru Bramchari. Be as it may, it is the case of the petitioner that the construction of the petitioner was stopped mid-way and on account of rainy season, the petitioner is facing acute hardship. Learned Advocate submitted that if the petitioner is granted permission to carry on further construction till the authorities decide the issue finally, the petitioner will not claim any

equity on the basis of such further construction and eventually, if the petitioner loses in the present litigation, he will remove the construction at his cost. He also agreed that the petitioner will not create any third party interest and will not part with the possession even if the construction is completed.

4. Considering the submission made, this petition is disposed of with the direction to the authorities to conclude the pending proceedings before the City Survey Officer expeditiously and preferably within a period of two months from the date of receipt of a copy of this order. In the mean time, it will be open for the petitioner to carry on the construction work on the above mentioned land subject to the following conditions:

(1)The petitioner shall not claim equity on the basis of the construction carried on under this order.

(2)Eventually if the petitioner loses in the present litigation he shall remove the construction at his cost.

(3)The petitioner shall not create any third party interest in the property and shall not part with the possession even if the construction is

concluded; without the permission of the authorities.

5. It will be open for the authorities to draw panchnama of the site in question to record the present status of the construction. The petitioner shall co-operate with the authorities in drawing such a panchnama. With these directions, the petition is disposed of. Rule made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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